

Public Nuisance Ordinance
Ordinance No. 1663

An ordinance of the City of Santa Clara adding a new chapter 22A (to be entitled "public nuisances") to "The Code Of The City Of Santa Clara, California"

Now Therefore, Be It Ordained By The City Of Santa Clara, as follows:

Section 1: That a new Chapter 22A (to be entitled "Public Nuisances") is added to "The Code of The City of Santa Clara, California" to read as follows:

Chapter 22A
Public Nuisances

Table of Contents

22A-1.Findings and purpose.

22A-2.Definitions.

22A-3.Property maintenance - public nuisances.

22A-4.Responsibility for property maintenance.

22A-5.Authority of enforcement officer.

22A-6.Abatement of public nuisances.

22A-7.No duty to enforce.

22A-8.Criminal or civil penalty for violation.

22A-9.Emergency cleanup or abatement.

22A-10.Costs of enforcement.

22A-11.Non-emergency abatement by the City.

22A-12.Conclusive notice.

Sec. 22A-1. Findings and purpose.

(a) The City Council of the City of Santa Clara does hereby find that it is necessary to provide for the abatement of conditions which are offensive or annoying to the senses, detrimental to property values and community appearance, an obstruction to or interference with the comfortable enjoyment of adjacent property or premises, or hazardous or injurious to the health, safety or welfare of the general public in such ways to constitute a public nuisance; and, to provide standards to safeguard life, health and public welfare in keeping with the character of the City by allowing for the maintenance of property or premises for each of the following purposes:

- (1) To safeguard the health, safety and welfare of the people by maintaining property or premises in good and appropriate condition;
- (2) To promote a sound and attractive community appearance; and,
- (3) To enhance the economic value of the community, and each area in it, through the regulation of the maintenance of property or premises.

(b) Accordingly, the City Council finds and declares that the purpose of this Chapter is to:

- (1) Reduce the threat to health, safety, welfare, appearance and economic value due to the decline in property condition(s) by lawfully delineating the circumstances under which such condition(s) may be considered illegal and/or abated; and, further finds that,
- (2) Abatement of such condition(s) is in the best interest of the health, safety and welfare of the residents of the City because maximum use and enjoyment of property or premises in proximity to one another depends upon maintenance of those properties or premises at or above the minimum standard.

Sec. 22A-2. Definitions.

For the purpose of this Chapter, the following words and phrases are defined as follows:

- (a) Abandoned, in addition to those definitions provided by state codes, local ordinances and case law, the term "abandoned" means and refers to any item which has ceased to be used for its designed and intended purpose. The following factors, among others, will be considered in determining whether or not an item has been abandoned:

- (1) Present operability and functional utility;
- (2) The date of last effective use;
- (3) The condition of disrepair or damage;
- (4) The last time an effort was made to repair or rehabilitate the item;
- (5) The status of registration or licensing of the item;
- (6) The age and degree of obsolescence;
- (7) The cost of rehabilitation or repair of the item versus its market value;
and,
- (8) The nature of the area and location of the item.

(b) Abate means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the Enforcement Officer in his/her judgment shall determine is necessary in the interest of the general health, safety and welfare of the community.

(c) Attractive Nuisance means any condition, instrument or machine which is unsafe, unprotected and may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot. This includes any abandoned wells, shafts, basements or excavations; abandoned refrigerators and motor vehicles; any structurally unsound fences or structures; or, any lumber, trash, fences, debris or vegetation which may prove hazardous or dangerous to inquisitive minors.

(d) Dismantled means that from which essential equipment, parts or contents have been removed or stripped and the outward appearance verifies the removal.

(e) Enforcement Officer means that City officer or employee as may be designated in writing by the City Manager to enforce property or premises maintenance, zoning and other City Code violations, as authorized by Penal Code § 836.5.

(f) Inoperative means incapable of functioning or producing activity for mechanical or other reasons.

(g) Lienholder means any person, as defined in this Chapter, who has a recorded interest in real property, including mortgagee, beneficiary under a deed of trust, or holder of other recorded liens or claims of interest in real property.

(h) Nuisance means any public nuisance known at common law or in equity jurisprudence.

(i) Owner means the registered owner of a vehicle, the person(s) to whom property tax is assessed on real or personal property, as shown on the last equalized assessment roll of the County, renter(s), lessor(s) and other occupants residing permanently or temporarily on property.

(j) Person means individual, partnership, joint venture, corporation, association, social club, fraternal organization, trust, estate, receiver, or any other entity.

(k) Premises means any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved, occupied or unoccupied, including adjacent streets, sidewalks, parkways and parking strips.

(l) Property means any real property including but not limited to land, lot, or parcel of land, or any hereditament held by any owner, and shall include any alley, sidewalk, parkway or unimproved public easement abutting such real property, lot or parcel of land.

(m) Structure means anything constructed, built or planted upon, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which structure requires location on the ground or is attached to something having a location on the ground, including fences, gates, garages, carports, swimming and wading pools, patios, outdoor areas, paved areas, walks, tennis courts and similar recreation areas.

(n) Wrecked means that which has outward manifestation or appearance of damage to parts and contents which are essential to operation.

Sec. 22A-3. Property maintenance - public nuisances.

It is hereby declared to be a public nuisance for any owner or other person in control of said property or premises to keep or maintain property, premises or rights-of-way in such a manner that any of the following conditions are found to exist:

(a) Abandoned, dismantled, wrecked, inoperable, unlicensed, and discarded objects, equipment or appliances such as, but not limited to vehicles, boats, water heaters, refrigerators, furniture which is not designed for outdoor use, household fixtures, machinery, equipment, cans or containers standing or stored on property or on sidewalks or streets which can be viewed from a public street or walkway, alley or other public property which items are readily accessible from such places, or which are stored on private property in violation of any other law or ordinance;

(b) Discarded putrescibles, garbage, rubbish, refuse, or recyclable items which have not been recycled within thirty (30) days of being deposited on the property which are determined by an Enforcement Officer to constitute a fire hazard or to be detrimental to human life, health or safety;

(c) Oil, grease, paint, other petroleum products, hazardous materials, volatile chemicals, pesticides, herbicides, fungicides or waste (solid, liquid or gaseous) which is determined by an Enforcement Officer to constitute a fire or environmental hazard, or to be detrimental to human life, health or safety;

(d) Lumber (excluding lumber for a construction project on the property with a valid permit), salvage materials, including but not limited to auto parts, scrap metals, tires, other materials stored on premises in excess of seventy-two (72) hours and visible from a public street, walkway, alley or other public property;

(e) Receptacles for discarded materials and recyclables which are left in the front yard following the day of the regularly scheduled refuse pick-up for the property;

(f) Swimming pool, pond, spa, other body of water, or excavation which is abandoned, unattended, unsanitary, empty, which is not securely fenced, or which is determined by the Enforcement Officer to be detrimental to life, health or safety;

(g) Any premises which detrimentally impacts the surrounding neighborhood because of dilapidation, deterioration or decay or is unsafe for the purpose for which it is being used or is not secured or is improperly secured; and,

(h) Any condition on a property which meets the requirements of subparagraph (1) and (2), below:

(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; and,

(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Sec. 22A-4. Responsibility for property maintenance.

The owner, occupant, lessee or tenant of any property within the City shall be responsible for the maintenance of property and premises in a manner consistent with the provisions of this Chapter and the Code of the City of Santa Clara.

Sec. 22A-5. Authority of enforcement officer.

Enforcement of this Chapter may be accomplished by the Enforcement Officer in any manner authorized by the Chapter or by any other law, including but not limited to issuance of criminal citations, civil actions and abatement.

Sec. 22A-6. Abatement of public nuisances.

(a) Non-exclusive authority to abate. The City may choose to abate any public nuisance or violation of the City Code through any of the abatement methods set forth in the City Code or in other local, state or federal law, and nothing contained in this Chapter shall be construed as limiting, prejudicing or adversely affecting the City's ability to concurrently or consecutively use any of those proceedings as the City may deem are applicable. Proceeding under this Section will not preclude the City from proceeding under other Sections of this Chapter. Whenever an Enforcement Officer determines that any condition exists in violation of the provisions of this Chapter, he/she may take enforcement action pursuant to this Section.

(b) Right of entry. The Enforcement Officer may enter any property or premises at all times to perform any duty imposed upon him/her by this Chapter whenever the Enforcement Officer has cause to believe a violation of provisions of this Chapter is occurring, provided that:

(1) The Enforcement Officer shall present proper credentials, state the reason for entry and request entry from the owner or occupant.

(i) If entry is denied, he/she may seek a court ordered inspection warrant if cause exists pursuant to the Code of Civil Procedure § 1822.50, et seq.

(ii) If entry is denied, the Enforcement Officer shall have recourse to every remedy provided by law to secure entry.

(2) The Enforcement Officer shall make a reasonable effort to locate the owner of unoccupied property or premises, inform the owner of the reasons for entry and request entry.

(3) The Enforcement Officer shall not enter any property or premises in the absence of permission to enter, unless an inspection warrant has been issued by a court of competent jurisdiction.

Sec. 22A-7. No duty to enforce.

Nothing in this Chapter shall be construed as requiring the City to enforce the prohibitions in this Chapter against all or any properties which may violate the Ordinance. In the City's prosecutorial discretion, and as the City's resources permit, this Ordinance may be enforced only as to a limited number of problem properties per year. Nothing in this Section or the absence of any similar provisions from any other City law shall be construed to impose a duty upon the City to enforce such other provision of law.

Sec. 22A-8. Criminal or civil penalty for violation.

Pursuant to the City's prosecutorial discretion, the City may enforce violations of the provisions of the Chapter as criminal, civil or abatement actions.

(a) Infraction/misdemeanor. Any person who violates any of the provisions of this Chapter shall be guilty of an infraction and/or misdemeanor. Each and every day, or any part thereof, during which any such violation is committed, continued, or allowed shall be a separate offense.

(b) Prosecution. Every violation of this Chapter shall be a misdemeanor; provided, however, that where the City Attorney has determined that such action would be in the best interest of justice, the City Attorney may specify in the accusatory pleading or citation, that the violation shall be prosecuted as an infraction.

(c) Penalty for infraction. Each and every violation of this Chapter which is deemed an infraction is punishable by:

(1) A fine not exceeding one-hundred dollars (\$100.00) for the first violation;

(2) A fine not exceeding two-hundred dollars (\$200.00) for the second violation of the same or similar provision within one year period; or,

(3) A fine not exceeding five-hundred dollars (\$500.00) for each additional violation, after the second, of the same or similar provision of this Chapter within a one year period of the first violation.

(d) Penalty for misdemeanor. Each and every violation of this Chapter which is deemed a misdemeanor, is punishable by a penalty of not more than one-thousand (\$1,000) dollars; or by imprisonment in the City or County jail for a period of not exceeding six (6) months; or, by both penalty and imprisonment.

(e) Civil Penalties. Any person who intentionally, accidentally, or negligently violates any provision of this Chapter may be civilly liable to the City in the sum of not less than one hundred dollars (\$100.00) but not to exceed one thousand dollars (\$1,000.00) per day for each day in which such violation occurs or continues. The City may petition the municipal or superior court to impose, assess and recover such sums. The civil penalty provided in this Section excludes inspection costs and cleanup or abatement costs; is cumulative and not exclusive; and, shall be in addition to all other remedies available to the City under state law and local ordinances.

Sec. 22A-9. Emergency cleanup or abatement.

In order to enforce the provisions of this Chapter, when the City Manager or his/her duly authorized agents and representatives find and determine that the severity of the violation warrants immediate action, he/she may clean up or abate violation thereof. The cost of such cleanup or abatement may be recovered by the City in a civil action. Such emergency cleanup or abatement will not relieve the person of further action which may be taken by the City Manager or his/her duly authorized agents and representatives, including but not limited to, liability for any violations of this Chapter or any other applicable provisions of state law and local ordinances.

Sec. 22A-10. Costs of enforcement.

In any civil, criminal or administrative appeal, hearing or action commenced by the City under this Chapter, the City shall be entitled to recover from the defendant of such action reasonable attorney's fees, costs of suit, any other

costs of enforcement, including, but not limited to, inspection costs and cleanup or abatement costs.

Sec. 22A-11. Non-emergency abatement by the City.

Following determination by the City Manager that a nuisance shall be abated by the City, the notices required by the California Code of Regulations, Title 25, et seq., shall be given and a hearing shall be conducted as provided therein. Following abatement, the costs of abatement include those authorized by this Chapter shall be confirmed by the City Council as provided in the California Code of Regulations and thereafter placed as a lien on the subject property. The proceeding provided by the California Code of Regulations is not exclusive. The City may abate by all other legal means available to it.

Sec. 22A-12. Conclusive notice.

Mailing of notice of any hearing or order under this Chapter to the owners of the real property concerned as the owners' names and addresses are shown on the last equalized roll upon which City taxes are collected shall be conclusively deemed to be the proper persons and addresses for mailing the resolution, and the failure of any or all of the addressees to receive the notice shall not invalidate any of the proceedings. Further, the posting of notice of a hearing or order pursuant to this Chapter shall be conclusively deemed to be adequate notice to any and all occupants, users or possessors of the property or its contents, and the failure of any such occupant, user, or possessor to see, read, understand or otherwise receive the notice shall not invalidate any of the proceedings."

Section 2: Severability.

If any provision, clause, sentence, paragraph, or phrase of this Ordinance or the application thereof to any person or circumstances is held, for any reason by a court of competent jurisdiction, to be invalid or unconstitutional, such decision shall not affect the validity of other provisions or applications of the provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are hereby declared to be severable. The City Council of the City of Santa Clara declares that it would have passed this Ordinance, and every section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases were to be held invalid or unconstitutional by such court.

Section 3: Savings clause.

The changes provided for in this Ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this Ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this Ordinance.

Section 4: Effective date.

This Ordinance shall be in effect thirty (30) days after its final adoption and before its final adoption it shall be published in accordance with the requirements of the Charter of the City of Santa Clara.

Passed for the purpose of publication this 18th day of October, 1994, by the following vote:

Ayes: Ash, DeLozier, Gillmor, Nadler, Procnier and Mayor Souza

Noes: None

Absent: None

Attest: J. E. Boccignone, City Clerk, City of Santa Clara